

REMARKS/ARGUMENTS

Claims 1 and 4-27 are pending. By this Amendment, claims 7, 8, 15, 16 and 20 are amended. Reconsideration and withdrawal of rejection are respectfully requested.

Claims 1, 4, 7, 9-19 and 22-27 were rejected under 35 U.S.C. §103(a) over Replogle (U.S. Patent No. 3,117,574) in view of Wright (U.S. Patent No. 4,657,010). This rejection is respectfully traversed.

With respect to claim 1, the Office Action states that Replogle discloses the Applicants' invention as claimed with the exception of providing a yoke having the first, second, third and fourth distances recited in claim 1.

However, Replogle also fails to teach or suggest that the yoke includes a recess structure to allow connection between the frame and yoke via a connector clip. Replogle also fails to teach or suggest that each yoke includes a first dimension measured from the recess to a top portion of a yoke vertical finger, a second dimension measured from the recess to each end portion of the yoke horizontal finger, a third distance measured from the recess to a rear edge of the yoke vertical finger and a fourth distance measured from the recess to a lower edge of the vertical finger. In the Office Action, there is no assertion that Replogle teaches any of these structural features.

Moreover, Replogle does not teach or suggest the first, second, third and fourth distances, as recited in claim 1. In order to make up for this deficiency, the Office Action relies on the teachings of Wright. Wright's mask is made adjustable by the use of overlapping upper and lower sections which may be connected with one another in various configurations depending on the size of the patient. The area of overlap can be made larger or smaller depending on the facial

length of the wearer. See the Abstract and corresponding description. Wright also teaches the use of conventional straps 32, as described in column 2, lines 45-55.

Accordingly, Wright does not teach or suggest a strap having a yoke or a yoke having first, second, third and fourth distances as recited in claim 1. Wright teaches the use of an adjustable cushion/frame, and thereby fails to teach or suggest a yoke having a first, second, third or fourth distance of the yoke. It is unclear from the Office Action how Wright's adjustable frame could possibly lead one of ordinary skill in the headgear art to arrive at a yoke having the dimensions recited in claim 1.

In addition, the Office Action indicates that after reviewing the Applicants' specification, "the examiner found no criticality on why the yoke must be the particular dimensions as described (sic) in claim 1." Accordingly, the Examiner has considered the recited dimensions a matter of design choice. This is the same position which was taken in the first Office Action. In reply to the first Office Action, Applicants pointed out that it is incumbent on the Patent Office to establish a *prima facie* case of obviousness as to why one of ordinary skill in the art would have modified the Replogle/Wright combination to arrive at the claimed dimensions of a yoke as recited in claim 1. The Office Action has failed to establish such *prima facie* case of obviousness, merely stating that the dimensions recited in the claims were an obvious matter of design choice.

Moreover, as explained in Applicants' March 14, 2005 Amendment, Applicants' specification establishes that the claimed dimensions do in fact have significance. For example, as described in paragraph 77 of the original application, the design of adult masks typically takes into account body mass and racial nose characteristics. For example, the East Asian-shaped nose typically has a lower nasal region compared with the Caucasian-shaped nose. However,

Applicants discovered that below the ages of 5-7, there are few racial distinctions in children. In particular, neonates, infants and young children have no nasal bridge. Not only do children have smaller heads and faces than adults, their heads and faces are differently shaped. In accordance with an aspect of the invention, a system of mask and headgear sizes has been developed in which a minimal set of components can be used to fit the widest range of people. See original paragraph 77 of the specification.

Moreover, Table 4 appearing on page 11 of the original application further exemplifies that the claimed dimensions are not mere obvious design choices. For example, dimensions A, B, C and D are tabulated for a related art mask (ResMed's Vista® Mask) against three embodiments of the present invention. Noteworthy is the fact that the dimensions A-D are not simply shrunk as compared to the Vista Mask, rather dimensions A, B, C and D can be smaller than and in some cases larger than the dimensions for a Vista® Mask.

With respect to claim 7, the Replogle/Wright combination fails to teach a cushion for use with a nasal mask, comprising an outer membrane including a face contacting portion to form a seal with the patient and an underlying rim positioned below the membrane. Replogle does not teach or suggest an outer membrane and an underlying rim positioned below the membrane. Wright does not make up for this deficiency. It is noted that the first paragraph on page 2 of the present Office Action indicates that the traversal regarding claim 7 has been fully considered and is persuasive. It is not clear whether only one or all of the arguments were found persuasive, but in any event, Wright does not make up for any of these deficiencies.

In addition, the Replogle/Wright combination does not teach or suggest that the cushion includes a nasal bridge region, a top lip region, and two side regions. Neither Replogle nor

Wright teaches or suggests a top lip region, since both are directed toward full face mask whereas claim 7 (as amended) effectively describes a nasal cushion.

With respect to independent claim 14, the Replogle/Wright combination fails to teach or suggest first and second straps that are joined to one another at a rear portion of the patient's head in use via a cross-over member. Replogle clearly does not show a cross-over member, and the description of Wright's straps 32 does not seem to encompass a cross-over member. See column 2, lines 45-55.

With regard to claim 15, the Replogle/Wright combination fails to teach or suggest first and second straps each adapted to be provided to the mask frame of the mask, wherein each of the first and second straps includes an at least partially coextensive yoke, each of the first and second straps along with its respective yoke having co-located and unitary upper and lower portions, each said yoke being constructed and arranged to accommodate a pre-adult patient in the range of 2-6 years. Neither Replogle nor Wright teaches or suggests this subject matter. Similar remarks apply to claim 16.

The dependent claims are patentable by virtue of their dependency on the allowable independent claims, and for the further features they recite. It is noted that, in reference to dependent claim 4, dependent claims 10 and 23, and dependent claims 11 and 24, the Office Action takes the position that the Examiner found no criticality regarding the recited dimensions, and therefore concludes that each of these dimensions is simply a matter of design choice. However, the Office Action has failed to establish a *prima facie* case of obviousness with respect to any one of these claims, since the Examiner has not even attempted to state that it would have been obvious to one of ordinary skill in the art to have modified the prior art to arrive at the

claimed dimensions. Moreover, the claimed dimensions have been selected for reasons described in the specification.

In regard to claims 7 and 14, the Office Action takes the position that the particular dimensions described in claims 7 and 14 are matters of design choice. However, claims 7 and 14 do not describe any dimensions. Therefore, further explanation is requested.

Claim 5 was rejected under 35 U.S.C. §103 over Replogle in view of Norfleet. However, this rejection is traversed since neither Replogle nor Norfleet teaches or suggests at least the first, second, third and fourth dimensions recited in claim 1. In the Office Action, it is admitted that Replogle does not teach or suggest the first, second, third and fourth dimensions. In addition, Norfleet was not relied upon to show these dimensions, nor does it teach these dimensions. Therefore, withdrawal of the rejection is respectfully requested.

Similarly, withdrawal of the rejection of claim 6 (based on the Replogle/Anscher combination) is also requested since the Office Action has admitted that Replogle does not teach the first, second, third and fourth dimensions, and Anscher does not make up for this deficiency, nor was it relied upon for such.

Dependent claims 5 and 6 are also patentable by virtue of the further subject matter they recite, especially in combination with the claim(s) from which they depend.

Applicants appreciate the indication that claims 8, 20 and 21 are indicated to define patentable subject matter if placed into independent form. However, in view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

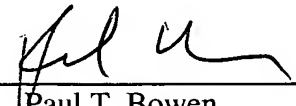
GING et al.
Appl. No. 10/781,949
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Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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